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Attorneys for Defendants  
7 CONTRA COSTA COUNTY (erroneously sued as Contra Costa County Sheriff's  
Department) and M. BAILEY  
8

9 UNITED STATES DISTRICT COURT  
10 SOUTHER DISTRICT OF CALIFORNIA  
11

12 JOANNE LEWIS,

13 Plaintiff,

14 v.

15 UNITED STATES, CBP OFFICER  
AMIR, individually and in his official  
16 capacity; CBP OFFICER RAMOS,  
individually and in his official capacity;  
17 CBP OFFICER GOMEZ, individually  
and in his official capacity; DOE CBP  
18 OFFICERS 1-50, individually and in  
their official capacities; SAN DIEGO  
19 COUNTY SHERIFF'S DEPARTMENT;  
DOE SDCS DEPUTIES 1-50,  
20 individually and in their official  
capacities; CONTRA COSTA COUNTY  
21 SHERIFF'S DEPARTMENT, CCCSD  
DEPUTY A. CHARLES, individually  
22 and in his official capacity; CCCSD  
DEPUTY M. BAILEY, individually and  
23 in his official capacity; DOE CCCSD  
DEPUTIES 1-50, individually and in  
24 their official capacities,

25 Defendants.

No. C15-2319 CAB JLB

ANSWER OF DEFENDANTS CONTRA  
COSTA COUNTY (erroneously sued as Contra  
Costa County Sheriff's Department) AND M.  
BAILEY TO COMPLAINT

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Ctrrm: 4C, Suite 4165, 4<sup>th</sup> Floor  
Judge: Hon. Jill L. Burkhardt, Presiding  
Date Action Filed: October 15, 2015  
Trial Date: None Assigned

26 Defendants CONTRA COSTA COUNTY (erroneously sued as Contra Costa County  
27 Sheriff's Department) and M. BAILEY (collectively "Defendants"), in response to the

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1 Complaint of Plaintiff JOANNE LEWIS (“Plaintiff”), admit, deny and raise affirmative  
2 defenses as hereinafter set forth:

3 **JURISDICTION AND VENUE**

4 1. Answering paragraphs 14, 15, and 17, these defendants admit the allegations  
5 contained therein.

6 2. Answering paragraphs 16, 18, 19, 20-23, 111-114, 223, 224, 226, 227, 228, 238,  
7 239, 240, and 248, these defendants deny generally and specifically each and every allegation  
8 contained therein.

9 3. Answering paragraphs 1-4, 6, 24-110, 115-161, 220, 221, 222, 225, 237, and  
10 241, these defendants do not have sufficient information or belief to enable them to answer  
11 said paragraphs, and on that ground deny each and every allegation contained therein.

12 4. Answering paragraphs 5, 7, 8, 9, 11, 12, 162-219, and 229-236, these paragraphs  
13 do not appear to be directed at these answering defendants. As such, these defendants do not  
14 have sufficient information or belief to enable them to answer said paragraphs, and on that  
15 ground deny each and every allegation contained therein.

16 5. Answering paragraph 13, these defendants admit that the Contra Costa County  
17 Sheriff’s Office is a law enforcement agency and a Department of the County of Contra Costa.  
18 These defendants admit that M. Bailey is a sheriff’s deputy. As to the remainder of paragraph  
19 13, defendants deny generally and specifically each and every allegation contained therein.

20 **AFFIRMATIVE DEFENSES**

21 **FIRST AFFIRMATIVE DEFENSE**

22 6. The complaint fails to state a cause of action against defendants CONTRA  
23 COSTA COUNTY and M. BAILEY.

24 **SECOND AFFIRMATIVE DEFENSE**

25 7. At the time and place of the occurrence alleged in the complaint, plaintiff failed  
26 to exercise ordinary care on her own behalf for her own safety. That negligence caused the  
27 injury and damage, if any, that she sustained. Consequently, plaintiff’s right to recover should  
28 be diminished by her proportional share of fault.

1 **THIRD AFFIRMATIVE DEFENSE**

2 8. At the time and place referred to in the complaint, and before such event,  
3 plaintiff knew, appreciated and understood each and every risk involved in placing herself in  
4 the position which she then assumed, and willingly, knowingly and voluntarily assumed each  
5 of such risks, including, but not limited to, the risk of suffering personal bodily injury.

6 **FOURTH AFFIRMATIVE DEFENSE**

7 9. Plaintiff has failed to mitigate the damages, if any, which plaintiff has sustained,  
8 and to exercise reasonable care to avoid the consequences of harms, if any, in that, among  
9 other things, plaintiff has failed to use reasonable diligence in caring for any injuries, failed to  
10 use reasonable means to prevent aggravation of any injuries, and failed to take reasonable  
11 precautions to reduce any injuries and damages.

12 **FIFTH AFFIRMATIVE DEFENSE**

13 10. Plaintiff's recovery is barred or should be reduced because any injuries or  
14 damages were proximately caused by the negligence and other legal fault of persons or entities  
15 other than these defendants.

16 **SIXTH AFFIRMATIVE DEFENSE**

17 11. The damages sustained by plaintiff, if any, were proximately caused by the acts,  
18 omissions, negligence, fraud and/or breach of obligations by persons other than these  
19 defendants and beyond defendants' supervision and control.

20 **SEVENTH AFFIRMATIVE DEFENSE**

21 12. Plaintiff's claim for punitive damages is unconstitutional and invalid in that it  
22 violates the United States Constitution, including, but not limited to, the Due Process Clause,  
23 and the Fifth, Sixth and Eighth Amendments.

24 **EIGHTH AFFIRMATIVE DEFENSE**

25 13. The causes of action alleged in the complaint are barred by the applicable  
26 statutes of limitations, including, but not limited to the provisions of Code of Civil Procedure  
27 sections 335.1, 337, 337.1, 337.15, 338(a), 338(b), 338(c), 338(d), 339, 340(3) and/or 343.  
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**NINTH AFFIRMATIVE DEFENSE**

14. Public entities and employees are immune from liability for any injury caused by the act or omission of another person.

**TENTH AFFIRMATIVE DEFENSE**

15. Plaintiff's claim under the Federal Civil Rights Act is barred because the complaint fails to allege facts that go beyond mere tortious conduct and rise to the dignity of a civil rights violation.

**ELEVENTH AFFIRMATIVE DEFENSE**

16. Defendants are immune from liability under the Federal Civil Rights Act because they acted in good faith with an honest and reasonable belief that their actions were necessary and appropriate.

**TWELFTH AFFIRMATIVE DEFENSE**

17. Defendants are immune from liability under the Federal Civil Rights Act because a reasonable police officer could believe that their acts and conduct were appropriate.

**THIRTEENTH AFFIRMATIVE DEFENSE**

18. Defendants are immune from liability under the Federal Civil Rights Act because they acted in good faith and without malice under the apparent authority of an enactment.

**FOURTEENTH AFFIRMATIVE DEFENSE**

19. Public entities and employees are immune from liability for any injury caused by a misrepresentation of a public employee pursuant to California Government Code section 818.8.

**FIFTEENTH AFFIRMATIVE DEFENSE**

20. Public entities and employees are immune from liability for any injury caused by the acts of others pursuant to California Government Code section 820.8.

**SIXTEENTH AFFIRMATIVE DEFENSE**

21. Defendants are immune from suit pursuant to California Civil Code section 47.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

22. The named individual defendants were not willful, wanton, reckless, malicious, oppressive and/or done with a conscious or reckless disregard for the constitutional and state law rights of Plaintiff.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

23. Defendants are not liable for plaintiff's damages, if any, due to the superseding or intervening causes of other persons.

**NINETEENTH AFFIRMATIVE DEFENSE**

24. Defendants and its employees are immune from civil liability pursuant to the provisions of Government Code sections 815.2 and 820.4 to the extent that the injuries alleged in the complaint were caused wholly or in part by the act or omission of a public employee in executing or enforcing any law in the exercise of due care.

**PRAYER**

WHEREFORE, defendants CONTRA COSTA COUNTY (erroneously sued as Contra Costa County Sheriff's Department) and M. BAILEY pray as follows:

1. That Plaintiff take nothing by the Complaint;
2. That Plaintiff's Complaint against it be dismissed in its entirety;
3. For award of costs, attorney fees, and expenses of suit against Plaintiff pursuant to 42 U.S.C. section 1988 and California Code of Civil Procedure section 1038; and
4. For such other and further relief as justice may require and the law allow.

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**JURY TRIAL DEMAND**

Defendants demand trial by jury in this action on all claims as to which the right to trial by jury attaches.

DATE: November 13, 2015

SHARON L. ANDERSON  
COUNTY COUNSEL

By: s/Patrick L. Hurley  
Deputy County Counsel  
Attorneys for Defendants  
CONTRA COSTA COUNTY (erroneously  
sued as Contra Costa County Sheriff's  
Department) and M. BAILEY